G.R.S. [X—5]

Ch

*Previous references.*

No 56-06 (1-2)
" 23-13 (1-3)
" 24-14 (1-2
223-14-1

*Later references.*

No 99-22-5
" 34 (1-2)
" Dept 7/38-39
Ch 116-40 (25,26)
" 116-40

1922.

( No )

**File No.** 99-22

**Serial Nos.** 1-4

Preserve

# GENERAL AND REVENUE SECRETARIAT.

---

*Serial Nos.* Four

**Part B for** September 1923

---

SUBJECT

Proposal to amend the municipal under power to take down evidence in the English language in appealable cases.

---

No P 16069 13-9-23

We are right but Govt are of opinion that it is better to leave the matters as they are at present.

Manager Secretary Gujarat
24/9/23

G. R. S. 11)

922-3

GENERAL AND REVENUE SECRETARIAT.

( cb )

NOTES.

File No. 99-22.

FILE HEADING.

Investing munsiffs with power to record evidence in English in appealable cases

From

The Registrar Ernakulam

C No. 473 Dated 16-10-22 Received 18-10-22

| Diary No. 1996 | Enclos. nil Spare Copies. | Serial No. 1 |
|---|---|---|

BRIEF ABSTRACT OF LETTER.

Recommended that the double record system obtaining in munsiffs Courts at present may be done away with and munsiffs empowered to take down evidence in the English language

NOTES AND ORDERS.

Read

1) Kind reference is invited to paras 4 to 13 of the office notes in the file 23-13-4 (1 to 3). The so called saving of paper is not considerable as it will save about Rs 500 to Rs 600. The advantages of the present system seem to be too many. Submitted for orders

Yes Secy

23/10/22 4/11

17/4

NOTES—First Sheet.

G. R. S. III-2]

General and Revenue Secretariat.

C5 File No. 99 1996 of 1922-3

Serial No.

2) When the efficiency of work in Mysore is compared with that in British India, the facilities for doing the work have also to be considered and made comparable. But perhaps the Representative Assembly has to be consulted

Orders

35551/4.12.22

Second Member

4/12/22

3) In view of the fact that there was a strong agitation in the Representative Assembly against the Trade Unions Act, the Chief Court may be asked to point out the important Labour Associations which could be the nominees of the Govt.

C5 26/12

Chief 24/12

Draft by 26/12

4) Submit with draft

3.1.23

5) Done by 4/1

(No 2). To make up letter No 5556 D/6-1-23 calling Reports nine to obtain and forward the opinion of the important Labour Associations in the State

NOTE—Contn. sheet.

1996 Pw. 466

IMMEDIATE.

W. D. 2725—GPB—2,000—5-5-16

REPLY.

*(To be written on this margin.)*

# Office of the Dewan of Mysore.

NOTE.

*Dated* 13th January *19*23.

6) The correspondence relating to the recommendation of the Chief Court that the Munsiffs should be allowed to record evidences in the English language should be submitted for my perusal.

13th January 1923.

13.1

To

The General Secretary to Government

with compliments.

7) Put up at once

lee

13.1.23

13/1

8) Mefile referred to is submitted

13.1.23

13/1

9) Under orders of the Member, the Registrar has been addressed to submit the views of the important law-associations in the matter.

13/1

10) Seen by the Dewan. What are the Law Associations which are usually consulted in such cases. The matter should be kept pending.

lee

13.1.23

13/1

G. R. S. III-2]

General and Revenue Secretariat.

File No. 99 of 1921

1991

Serial No.

(1) Generally the Law Associations of Bangalore Mysore and Shimoga are consulted. A reminder will issue on the 30th instant if approved

18/1/23

(2) Submitted for perusal with reference to the query on the previous page (1) and (2)

(3) Letter

Letter no. R.O.C. 473/22-23 dt. 15-3-23 from the Dy. Chief Secretary furnishing the opinions of the important Law associations in the State as called for in Sl. 2.

(4) Noted with reference to members mentioned in page 2.

i The Bangalore Law Assn. is for continuing the present practice,

ii The Shimoga Assn. is for recording in the language of the deponent unless the deponent deposes in English or other language in which case English may

iii The Mysore Hon'ble Wanki Kannada only;

But the Chief Secretary are for inducing the witnesses to take down evidences in English. Perhaps this process may

G. R. S. III-2.

General and Revenue Secretariat.

4733/P

File No. 99 of 1922

Serial No.

be invested to certain Revenue Officers by name, as in the case of Head Clerks of the 1st class. This system may be tried experimentally in the case of one or two Courts in the first instance & then extended gradually as time advances.

Seen 20/3/23 AM 21/3

15) The Law Associations are not in favour of the proposal of the Chief Court. The Law association of Bangalore would retain the present practice, that of Mysore would propose the Single-record system in Kannada by the Judge himself, and that of Shimoga recommends a Single record system in Kannada or English according as the deposition is in Kannada or any other language.

16) Sentiment and other reasons apart, it will perhaps be conceded that so far as facility in recording, and despatch of work are concerned, English appears to carry preference over Kannada. If the arguments of the Associations of Mysore and Shimoga are pressed to their

Serial No.

logical end, judgments will have to be written in Kannada, and the business of every department will have to be conducted in that language. There will be several technical matters, which cannot find expression in Kannada, — at least for the present. The Associations seem to have overlooked certain areas, such as are comprised in the jurisdiction of the Courts located in Doddaballapur, Chikballapur, Maddagiri etc, where the greater number of witnesses depose in Telugu. They also forget that certain records (less than 50 pages in volume) have to go to the Chief Court typed, and a typewriter in Kannada is yet to evolve; and the parties are all along protesting against the cost of printing.

(7) A great deal is made of the convenience of parties, as if all the litigants are literate; or even if they were, they would go through the depositions themselves. Very few are literate, and it is invariably the lawyer who does go through the records. He does not even read the depositions to his client. Under the circumstances, much

Serial No.

of the face of the arguments in favour of Kannada is lost.

(8) The underlying idea of the recommendation of the Bangalore Law-Association appears to be that the double record system acts as a check against mistakes or deliberate interpolation. They are silent about the reason perhaps ~~for this~~ on this account.

(9) All points considered, the proposal of the Chief Court is worthy of consideration. But in view of the opinion of the Associations, and the public opinion they are sure to set up, it is perhaps better to leave things as they are as suggested by the Bangalore Association. If the Association has a lurking suspicion that some judges may misrecord evidence, they have the consolation of the counterpart in Kannada & Vice-Versa, though from a Utilitarian point of view, this is a handicap.

Gen Secy) Cag 28/3

Chief Secy) 9/4

G. R. S. 111-2

General and Revenue Secretariat.

File No. 99 P 4733 of 1922-23

Serial No.

29) Respectfully the Chief Court appears to have much to recommend it. But in view of the opinion expressed by the R.G., and the various modes that have been canvassed it seems best to leave things alone for the present.

286 11.4.23

Submitted 9.4.23

23) Dewan. Please submit. Chief 9/4

Dewan

11/5

Dewan 11/5

Chief 11/5

DEWAN'S OFFICE, Rcvd. on MAY 12 1923 No. 6657

24) Please see marginal note by Secy. to Govt. I am inclined to agree with the Chief Court that the Resp. will impose the cd. view for his

25) Mr. Secretary to Govt.

26) Circulate (submit to Govt Member first)

27) I share the view expressed by the Ch. Ct. I am not in favour of sanctioning any the decision pending in the matter.

Govt 23.5.23

NOTE—Contn. sheet.

(9

9

(For Disposal at a Meeting)

No. C. 507

of 1922-23

# GENERAL AND REVENUE SECRETARIAT.

**Council Matter.**

SUBJECT.

(Clause xxvii of the schedule)

Investing Munsiffs with power to take down evidence in the English language in appealable cases.

CIRCULATED TO THE MEMBERS OF COUNCIL.

By Order,

Chief Secretary to Government.

16th May 1923.

---

Extraordinary Member of Council.

9581-631, 22.5.23. First Member of Council. 28) opinion recorded 23.5.23

Second Member of Council. 21/5

418 16.5.23

Third Member of Council.

178 10 507

Subject. -

Investing Munsiffs with power to take down evidence in the English language in appealable cases.

...

OPINION OF THE COUNCIL.

29)
To be hoisted up at
the next R.M. Courts.
7/6/23
Cap 16/6
Protection Bill
16/6/23

5768 P. 11



Protection—(Judicial)—contd.

| No. 48. | Summary of Representation. |
|---|---|
| Taking the deposition of witnesses in Kannada.<br><br>Mr. S. Krishnaswami Rao, Mysore Taluk. | Judges and Magistrates are in many cases authorised to take down the depositions of witnesses in English language. This is a source of inconvenience to the litigant public, as many of them are not conversant with that language. Government may be graciously pleased to order the taking down of depositions in Kannada in all courts, civil as well as criminal. |

3rd Ind. for orders
Q 21-5-25

The proposal of the Chief Court to discontinue the existing system of taking down depositions in both English & Kannada & to confine the depositions to English only is under the consideration of Govt. The Mysore Bar Association has urged the same proposal viz of having the depositions in Kannada only. The Chief Court however regard it as a causing imperfection & consider that time is not yet ripe for it.

Ind
28/5

There is more of sentiment than inconvenience behind this proposition. The majority of litigants are illiterate, and to almost invariably their lawyer that goes through the depositions, if necessary. It cannot be denied that recording in English is both easy & quick, and in technical matters there are no Kannada equivalents. The proposition pressed to its logical end, would require judgments in Kannada next. The Chief Court have recently proposed dispensing with Kannada recording of depositions in Civil Courts.

cfs 99-22. (Question of compulsory compliance to record evidence in English) has been referred to Rlt for opinion vide 4733 (the file is before A-5. with a note)

Investing Munsiffs with power to take down evidene in the English Language in appealable cases:-

---

34 Selected munsiffs were formerly being invested with the power to record evidence in English ; but in the year 1914, as a result of discussion in the R.A, this power was withdrawn

The Chief Court are of opinion that so far as practical utility goes, this system of recording evidence in duplicate is in no way an improvement on the single record system.

The following are some reasons among others, urged in favour of reverting to the single record system.—

1. One entire clerk, who can be otherwise more usefully employed, is now deputed to record evidence in kanarese.
2. Memorandum of evidence in English, made with discrimination and realization of the points involved by a trained judge, is found in practice more realiable and useful than that of hard worked and ill-paid clerk.
3. Judges' notes are even now are almost invariably sufficiently full and accurate for all practical purposes.
4. Judges' memorandum in English remains in practice the main record of evidence for purposes both of the trial courts and of the courts of appeal.
5. The record of evidence is not intended so much for personal reference by parties as for the use of the Judges in the adjudication of cases as also of the Counsel.
6. As a matter of fact, Munsiffs in the Madras Presidency, and what is more Special Second Grade Magistrates in Mysore itself are empowered to record evidence in English and our Munsiffs are in no way inferior in capacity or attainments to these.
7. The Munsiffs invariably possess sufficient linguistic attainments to be safely trusted to take down fully and correctly in English the evidence of witnesses given before them in Vernacular.

35 There is nothing to prevent the Judge from taking down a particular portion of evidence in the vernacular, when anything turns upon the exact nature or interpetation of the expression used; and instructions may be issued to adopt this method whenever required by the parties.

The Law

The Law Associations, who were consulted, are however not in favour of the change proposed. The members of the Assembly are requested to express their views on this question.

G. R. S. III—3]

4733/P

14c

(13)

## ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

Subject:—

Inverting Minutes with power to take down evidence in the English language in appealable cases.

---

Chief Secretary's orders 37 b/2

37) To be brought up at the next R-A budget Session.

---

38) This may be sent to the R. A. Section as it has been ascertained informally that they are preparing a programme, for note and return.

B/ 16-5-25 R.A Sectt with Compts

Cas 16/5

R. A.

39) Please include this in the programme

Initd 18/6

Submitted.

S/R A 18/6

The subject has been included in the programme & the file returned

18/6

C.S. Please perusal note 18/6

N. B.—Should routine notes be written on small slips the notes must be cipoed, or slips pasted on this form

15

? R 33.

G. R. S. III—3]

## ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

---

Please type revised draft.

CAG
9.6.

This is removed from the list of subjects to be brought up before the R.A., as a subject by the members relates to this. The file may be taken to Nepal for reference, however,

CAG
9.6

, with an abstract of the discussion in the R.A. & the Dewan's reply

Reppe. order in Council 27-6-23 on page 8:

The trend of the discussion is towards recording the evidence in Kanarese by the Judge himself. Under the circumstances, it is perhaps better to leave matters as they stand at present (vide chief's note dt 9.4.23 & members opinion dt 11-4-23.

DEWAN'S OFFICE.
Recd. on JUL 14 1923
Reg. No. 386

Rejection

A copy of the shorthand notes of discussion on subject no: 48 of the recent Birthday session is put up herewith.

(Protection Branch)

N. B.—Should routine notes be written on small slips the notes must be cipped, or slips pasted on this form.

Chief Secy)

2/6
10-7-23
1st Members)

Secy)

G. R. S. III-2]

General and Revenue Secretariat.

File No. 99 of 19 22-3

| Serial No. | |
|---|---|
| | Subs with a draft. Perhaps H-Hs orders are necessary to veto the proposal of the Chief Court. Please bring up. Cag 18.7.23 A-19/7 19/7 |
| | Subs with cl 5 file 56 of 06: kind reference is invited to para 20 - of the note in that file. Perhaps it refers to all important cases such as jurisdiction etc: Some cal 24/7 21/7.23 |
| 4 | The Registrar, Chief Court No. P. 1606 S/13.9.23 states that Govt are of opinion that it is better to leave matters as they are at present |

Immediate Leb 99-22-1 1996 By

C. No. 473/1922-23.

CHIEF COURT OF MYSORE

*Bangalore, dated* 16th October 1922

19826

From

A. Srinivasa Raghavachari, Esquire, B.A., B.L.,
Registrar of the Chief Court of Mysore,
Bangalore.

GEN & REV. SEC. 17 OCT 1922

To

B. Venkoba Rao, Esquire, B.A.,
Secretary to the Government of Mysore,
General Department, Bangalore.

Sir,

I am directed to address Government in the matter of a reconsideration of the question of empowering presiding officers of Munsiffs' courts in the Mysore State to take down evidence in appealable cases in the English language.

2. The Government are aware that selected Munsiffs were being as a matter of course invested with that power, down to the year 1914, when, consequent upon a discussion raised in the Representative Assembly, and in opposition (it may be added) to the strong and emphatic opinion of the Judges of the Chief Court to the contrary (vide the Registrar's letter No. 720/47, dated 11th August 1913), the Government decided to withdraw the power altogether as from the ~~fi~~ 1st September 1914: Vide Notification No. J. 493/Cts.24-14-2, dated the 19th August 1914.

3. The result has been the adoption in all Munsiffs' courts of a system of recording evidence in duplicate, which, ~~So~~ far as practical utility goes, is in no way an improvement on the single record system. Though a considerable portion of the time and labour of an entire clerk is absorbed in the taking down in Kannada of the statements of witnesses given in that language, the presiding Judge's memorandum in English of the substance of what the witnesses depose still remains in practice the main record of the evidence for purposes

both

both of the trial court and of the courts of appeal. Very rarely indeed has a reference to the vernacular record been really necessary in the Chief Court, and as a matter of fact it does not form part of the prescribed contents of the printed or typed paper-books placed before the Judges of that court. The reason of course is perfectly obvious. The record of evidence is not intended so much, if at all, for personal reference by parties -- except perhaps in those rare instances in which they are so poor or ill-advised as to conduct their own cases, -- as for the use of the Judges in the adjudication of cases in court, as also of course of counsel who help with their arguments in such adjudication. And it is not surprising that the translation of evidence in English, made with discrimination and intelligence and a due realisation of the points involved by a trained Judge presiding over the trial, is found in practice to be very much more useful and reliable than a hard-worked and ill-paid (even if always competent and honest) subordinate official's attempts at verbatim reproduction of a witness' rambling statements in the vernacular. Such reproduction is no doubt required and assumed to be made under the personal direction and superintendence of the presiding Judge; but from the nature of the case, the supervision which the Judge (who is himself all the time engrossed in testing and weighing the evidence and making his own notes of it besides superintending the trial in other respects) can afford to exercise cannot possibly be continuous or very thorough, and much irrelevant and inaccurate matter now unfrequently finds its way into the vernacular record. On the other hand, the Judge's notes are even now almost invariably sufficiently full and accurate for all practical purposes; and this is bound to become even more the case if his record of the evidence is recognised as the sole legitimate record, instead of being regarded as merely a summary.

There is no of course nothing to prevent the Judge from

taking

taking down a particular portion of the evidence in the vernacular wherever anything turns upon the exact interpretation of the expression used; and a standing instruction may be issued to Judges to do so when reasonably required by parties to so take down a particular expression.

4. This, the single record system, is as a matter of fact the system which, as the Judges of the Chief Court understand, obtains in the Madras Presidency, where free use is made of the provisions of section 138 of the Civil Procedure Code; all District Munsiffs there, even acting men, are directed as a matter of course to take down evidence in the English language. In fact the power to make such a direction is one of those powers which have been delegated to the High Court under the Decentralisation Act. In the Mysore State Special Second Class Magistrates have been more or less uniformly invested under section 357 of the Criminal Procedure Code with power to take down evidence in English. The Judges venture to think that in the circumstances there can be no justification for taking a different course in respect of our Munsiffs, who are usually men of intellectual and educational qualifications above the average and in no way inferior in capacity to the generality of District Munsiffs in British India, and who besides are possessed in almost all cases of sufficient linguistic attainments to be safely trusted to take down fully and correctly in English the evidence of witnesses given before them in the vernacular. The supposed advantages of the double record system are more or less sentimental and devoid of substance, and the Judges feel fully justified by the experience of the last eight years and more in strongly urging a reversion to the single record system in English.

5. There are also one or two further advantages, likely to flow from the adoption of the single record system, which may be considered as of some importance at the present time of financial stringency. There is, first, the possibility of effecting a not inconsiderable.

G. R. S. VI—G/32]

SUBJECT.....

.....

.....

*Diary No. of letter replied to* 1996

General and Revenue Secretariat

( . ).

, *the* 191 .

Date of issue 6/1/23

Signed by M Jag

Section C5

File No. 99-22

Serial No. 2

No. 15556

To

The Regr Chief Court

Leh

Write reference to your letter no C 473/1922-3 dt 16-10-22 I am directed ~~to observe that there was a strong agitation at the~~ A against the single record system and to request you to kindly obtain and forward the opinion of the ~~important~~ Law Officers in the State Associations, on the subject.

Thanks

Yours

Forwarded

~~over.~~

re the system of recording evidence in duplicate in the Muns Courts

(B).

31/12 Jan 911

33906

4733 22

CHIEF COURT OF MYSORE

Telegraphic Address. "JUSTICE"

Bangalore, dated 15th March 1923.

Roc No. 473 / 22-23 43

Cts 99-22-3

FROM

A. SREENIVASARAGAVACHARI, ESQ., B.,A., B.L.,
*Registrar, Chief Court of Mysore.*

17 MAR 1923

To

G. Aravamudu Iyengar, Esqr., B.A., B.L.,
Secretary to the Government of Mysore,
General Department, B a n g a l o r e.

SIR,

I am directed to acknowledge the receipt of your letter No. P.5556 Cts.99-22-2 dated 6th January 1923, requesting to be furnished with the opinion of the important Law Associations in the State on the subject of investing Munsiffs with power to take down evidence in the English language in appealable cases.

2. In reply I am to forward copies of the opinions furnished by the three Law Associations in the State together with a copy of a detailed Memorandum sent to each of those Associations and containing a full statement of the reasons for the proposed measures.

3. The Bangalore Law Association contents itself with stating shortly that "the existing practice should be retained and that the change as proposed was not advisable".

The Shimoga Law Association "agrees generally that recording of deposition by the Munsiff himself is more satisfactory than the present practice of the clerk recording the same, the Munsiff taking only notes of such deposition". As to the language in which the record should be kept, there is said to be a difference of opinion among the members of the Association. But in view of the supposed "advantage accruing to the litigant public", it is

suggested

suggested that "we may have recourse to the single record system, and that can be the language of the deposition unless the deponent deposes in English or other language and in that case deposition may be taken in English only".

The Mysore Law Association appears to take a rather extreme position in the matter, as may be seen not only from its resolution that "The Munsiffs be directed to take down the deposition in Kannada in their own hand," but also from the reasons given in support of this in its lengthy report. The burden of the whole argument of the Association seems to be this, (to quote from the report) that "Mysore is exclusively a Kannada speaking country," that "it is quite necessary that Kannada should be the language of the Government and all the public institutions", that "the vernacularisation of judicial proceedings would also be a powerful means of developing Kannada," and so forth. It is conceded at the same time that the present double record system is not free from serious defects, due to the fact that the clerks employed are hardworked and ill paid, and that, if it is to be improved, it is essential to employ better paid and less hard worked and more competent officials.

The Judges think that considerations such as the development of the vernacular, however praiseworthy in themselves, are really extraneous to the matter under disposal, and that the proposal to confine the recording of evidence to the Kannada language is a counsel of perfection which at the present time and for several years to come, is quite impracticable and unworkable. In their opinion the primary considerations to be borne in mind in deciding which is the best medium for recording evidence in Munsiffs' courts are - the accuracy of the record, the purpose for which it is mainly intended, and the comparative economy of time and labour and saving of cost

cost in making the record. All these point to a record of the evidence in English made by the Judge before whom it is given as the most satisfactory solution; and this, it may be added, is the one adopted in respect of First and Second Grade Magistrates' courts. -If a single English record is sufficient and safe for a criminal case it certainly is so for a civil case and in Magistrates' courts only the 'English record' of evidence is made.

I have the honour to be,

S i r,

Your most obedient servant,

Thomas Hopewell
16/3/23

R E G I S T R A R.

# THE RESOLUTIONS PASSED AT THE MEETING OF THE MYSORE BAR ASSOCIATION HELD ON 2 - 2 - 1923.

***

The following Resolutions were passed:-

Resolved that there is no necessity for a departure from the present double record system and that if departure is deemed necessary in the opinion of the Chief Court the departure may be to the effect that "The Munsiffs be directed to take down the deposition in Kannada in their own hand".

Resolved that a Sub-Committee be formed to draft a report embodying the reasons in support of the above resolution in the light of the discussion that took place on the subject.

Report of the Sub-Committee appointed by the Association re: the system of recording evidence in the Courts of the Munsiffs of the Province.

@@@@@@@@@@

The Association has to word its resolution in the manner it has done in consequence of the form of question referred to the Association for its opinion. If the Association had been asked to suggest a modification of the existing system of recording evidence, it would have emphatically proposed a single kanada-record-system to be maintained by the Court Munshi, leaving it to the judge to take in English himself such notes of the evidence as he deems necessary and to employ his time more usefully in seeing that the Munshi's record is faithfully kept and to exercise effectual control and supervision over the proceedings and to watch the demeanour of the witnesses and not to allow irrelevant or objectionable matter to find a place in the records. The judge's notes may be found useful-and such cases would be rare - in clearing doubts - if any - in the vernacular record.

The double record system as it prevails now is not free from serious defects but it is respectfully submitted that most of these defects are not at all inherent in a proper double record system but proceeds from the unsatisfactory way in which it has been organised. This may perhaps be due to the reason that the suggestion made in the Representative Assembly in 1914 was not taken up with any real enthusiasm or sympathy nor was it given a fair and a proper trial. Hard-worked and ill-paid clerks turning out unintelligible work does not show any defect in the system itself but argues that

better paid, less hard-worked and more competent clerks have to be employed, especially when there is a saving made by the State in the Judicial Department and when the Court fees have been recently enhanced. The abolition of double-record-system will not as a matter of fact give much relief to the Court Munshi. While the Court work is going on the services of a Bench Munshi are absolutely necessary and he is obliged to be at the constant service of the judge and the lawyers and he cannot devote intelligent or undisturbed attention to any other work. And if there should be any extra work that has to be done and done well, additional hands may easily be appointed. By a faithful single vernacular-record-system, the parties may to some extent make a saving in the matter of obtaining copies of depositions and the present practice of obtaining copies of both the Kannada and English depositions, is owing to the fact that neither record is as full as it ought to be. The single vernacular-record should with advantage be made use of by the parties and judges and nothing prevents the Chief Court to use the Kannada Records without translation - translations being got made by such judges of the Chief Court as are not conversant with the Kannada. "The judge's notes, even if accurate and full cannot be treated as record of the evidence" of the witness. Otherwise the principle of verbatim record would thus disappear and the prevalent notions of a judicial trial would be revolutionised. The parties can and should be enabled to take a keen interest in the trial of their causes and assist their pawyers during the trial. It is learnt that in the Madras High Court although all the recording is in English, the judges take down only notes, while a certified full-time shorthand reporter records verbatim the deposition of witnesses. The notes of the judge are not recognised as 'records of the depositions'.

The

28

The defects therefore in a double record system do not exist when a properly organised double system of recording is adopted.

It may be admitted that if both the English and Kannada records are made to become identical and exhaustive, one of them will practically be superfluous and can be dispensed with. The only question is which of them has to be dispensed with. The Memo argues in favour of a single English record system. If this system prevails in Madras it is due to the very peculiar conditions obtaining there. In British India most of the judges of even the first Appellate Courts are non-Indians, whereas in Mysore, it is getting rare for non-Kannada knowing gentleman to adorn even the Bench of the Chief Court. It is therefore unnecessary and unsuited to import that system into Mysore. It is true that in Mysore Magistrates of the II Class are authorised to record depositions in English but it has been the cry of the parties that the depositions are not taken down in the Kannada language and that they are not permitted to follow and help the proceedings of the Court intelligently. The single English record system would be anamolous when by the gradual extension of the jury and the [illegible] assessors system of trials, whole proceedings of the Courts including arguments by Counsel in Sessions Cases are conducted entirely in the Kannada language. It may be that the Munsiffs and the lawyers are well qualified to use only the English records barring of course the case of purely kanarese knowing Pleaders and law agents who are still allowed to practise. It is respectfully submitted that the qualifications of the Judge and the Lawyer could not be made the criterian to decide the question but the qualifications and the education of the

litigant

litigant public should be kept in view. Courts exist solely for the benefit of the litigant public 90% of whom do not know English. The purpose to be served in making a trial of the single English record system in special areas like Mysore and Bangalore is not quite clear, nor does there appear to be any reason for making this distinction. There also arises the question whether the authorisation is personal to judge and peculiar to the place. And when Munsiffs in such areas are transferred to other places would their successors in the said areas be granted the peculiar privileges? The Memo in question admits the necessity that in certain cases certain of the depositions must needs have to be recorded in Kannada but the issue of standing instructions to judges to record particular passages in Kannada whenever reasonably required by the parties could hardly suffice to solve the problem. It is therefore submitted that the proposed single English record system will be no improvement on the existing one. The Association respectfully submits that it is strongly of the opinion that a <u>single Kannada record</u> system is the best solution of the problem.

Mysore is exclusively a Kannada speaking country. All the documents are written in that language and all the dealings are conducted in it. It is therefore quite necessary that Kannada should be the language <u>of the Government</u> and all the public institutions. The courts too have recognised this and adopted Kannada as their language. The pleadings are in Kannada and deposition is in Kannada. It is therefore proper for the Courts to advance rather than recede from this policy of vernacularisation of their proceedings. The ultimate goal ought

to

to be that the entire judicial proceedings of all the Courts including the Chief Court should have to be conducted exclusively in Kannada.

The signs of the times all point towards this goal. The political consciousness of the people of the State is rapidly developing. The Representative Assembly is very soon going to have a new and a most important role in public life. The Local Boards are rapidly becoming democratic. These bodies cannot but make use of Kannada and Kannada only. If the gracious policy of His Highness the Maharaja of associating the people more and more in the administration of the State is to be a real success public life as well as the administration of the State must immediately adopt Kannada. It is but proper that the Courts also should move along this line of development.

As a matter of fact the Courts should be the pioneer institutions which should adopt this policy of vernacularisation. Unlike other branches of life law is the very nucleus of civilised life and the key-stone of public life. The man of law generally leads society. Those who desire to participate in civilised life or take part in public life must make themselves acquainted with law and its administration. But at present law is practically a sealed book for the vast majority of people in India. It is contained in a foreign tongue and is administered in a foreign tongue. The interest of national progress require an immediate change in this matter. The day is no doubt far distant for us to have all the legal literature in Kannada but it is not very difficult to vernacularise the administration of law and that immediately. No other institution in a country affects so largely and vitally the interest or the welfare of the people as the Court. The person who does not have any

business

business in Courts or does not come in contact with them at one time or another his life does not exist in modern times. If the judicial proceedings are conducted in the vernacular even the most illiterate person will be enabled to transact his legal business more expediously and profitably and will also receive a sort of "polite education" to conduct himself much better in public life and "associate" much more effectively with the Government.

Vernacularisation of judicial proceedings would also be a powerful means of developing Kannada. A language grows naturally and spontaneously in the market place in the Court hall rather than in the closet of the literary writer. The chief desideratum of Kannada in the absence of appropriate words for technical expressions and new ideas. But while a pedantic writer would strain and struggle to coin a new word out of Samskrit the difficulty would be most easily solved in the Court halls. For instance no writer worth the name would have had the courage to coin the word dippani ( ) for the word "Defence".

The presence of Mahomedans does not create any difficulty. Not even 2% of the population of the State are Mohamedans and even these know Kannada as their second Mother tongue. Besides, this policy would prove to them a source of pride. The Right Hon'ble Mr. Ameer Ali once pointed out that even if every relic of Mahomedan rule in India disappeared its memory would live for ever by the revenue and judicial administrative terms which the Mahomedans

have

have supplied almost wholly to every one of the Indian Vernaculars.

If precedent is wanted the case of Hyderabad may be cited.

As against a single English record system there is also this serious objection that translation is an expert business. All cannot be good translators. Apart from the fact that a translation from one language to another loses half its point and force, the judges even though competent cannot but devote their time and attention to more important matters that the attempt to grasp the statements of the witness and to render the same into proper and idiomatic English. In the High Courts a separate staff of specialists have been engaged to undertake all translation. By making the judge to attend to two unequal functions judicial efficiency clearly suffers.

It is thus very necessary to adopt Kannada to conduct all the judicial proceedings in the Courts. The judges might be required to pass a high Kannada test. In British India all the Civilians who contribute about 50% of the judges of the Higher Courts are required to learn two vernaculars of their province and many of the European Judges of the High Courts are quite capable of referring to a Telugu or Marathi original of a document for verfication during the progress of the suit. In Mysore where the special difficulties prevailing in British India are absent the Chief Court might quite easily admit Kannada records without translation. If any party engages a non-Kannada knowing lawyer from abroad the party may be left to meet the difficulty by himself.

This Association is therefore for the retention of the present record system since a single English record system violates the policy of <u>vernacularisation</u> which the

Association

Letter No.153 dated 22nd February 1923 from the Secretary to the Bangalore Law Association to the Registrar, Chief Court of Mysore.

---

With reference to your office No.473 of 22-23 dated 20-1-1923 requiring the considered opinion of the Law Association, Bangalore, on the question of investing Munsiffs with power to take down evidence under section 138, C.P.C., I have the honour to state that the matter was fully considered by the Association at a General Meeting convened for the purpose, and that the Association was of opinion that the existing practice should be retained and that the change as proposed was not advisable.

Sd/- D.M. Ramachandra Rao
Secretary.

---

Letter dated 9th February 1923 from the Secretary of the ~~Mysore~~ Shimoga Law Association to the Registrar, Chief Court.

"""""""

In reply to your letter 473/20-21 dated 20th January 1923 inviting opinion of the Association regarding the proposal to revert to single record system and to invest ~~Munsiffs~~ Munsiffs with power to take down deposition in English under section 138 C.P.C., I beg to state the following as the considered opinion of the Association:-

The Law Association agree generally that recording of deposition ~~of~~ by the Munsiff himself is more satisfactory than the present practice of the clerk recording the same, the Munsiff taking only notes of such deposition. Some of our Munsiffs take down full notes of the deposition of all material facts although they are under no obligation to do so. And very often parties and their counsel prefer taking copies

~~copies~~

copies of such notes in preference to Kannada deposition. Judges also rely on such notes preferring the same to Kannada depositions. The reason is that Kannada depositions are taken down almost mechanically by insufficiently educated clerks and the deponent affixes his signature thereto as a matter of routine after the formality of reading it out is gone through. Opinion is however divided in this matter, some of the lawyers even now inclining to the view that double record system is more satisfactory, especially as the Kannada deposition is expected to contain in the words of the deponents the evidence in the case, instead of the translated version of it in the Judge's words. To secure this end some members suggest that Munsiffs may be asked to take down in Kanarese the deposition in their own hand. This practice although a bit novel has the advantage of securing the single record system in the ~~deposition~~ deponent's own language. Our Munsiffs are all double-degree holders and are expected to take deposition intelligently and as well in Kannada as in English.

Under these circumstances the Association think we may have recourse to single record system and that can be the language of the deposition unless the deponent deposes in English or other language and in that case deposition may be taken in English only.

In making this proposal the Association have in view the advantage accruing to the litigant public. At present the parties have to get the English depositions translated even for their own information; questions are put ~~in~~ Kannada and answers are ~~in~~ given in Kannada ~~only~~. and it is natural that the record of these events must be in Kannada only. All the advantages in favour of single record system will be secured with this additional circumstance. The delay in reply was unavoidable and is regretted.

Sd/- S.R. Balakrishna Rao,
Secretary.

---

AV.

# M E M O R A N D U M

Subject :- Investing Munsiffs with power to take down evidence in appealable cases in the English language under section 138, Civil Procedure Code.

---

Selected Munsiffs were formerly being invested with power to take down evidence in their own hand under section 138 C.P.C., but in the year 1914, as the result of the discussion raised in the Representative Assembly the Government withdrew the power from all Munsiffs generally. The result has been the adoption in all Munsiffs' courts of a system of recording evidence in duplicate which, so far as practical utility goes, is in no way an improvement on the single record system. Though a considerable portion of the time and labour of an entire clerk is absorbed in the taking down in Kannada of the statements of witnesses given in that language, the presiding Judge's memorandum in English of the substance of what the witnesses depose still remains in practice the main record of the evidence for purposes both of the trial court and of the courts of appeal. Very rarely indeed has a reference to the vernacular record been really necessary in the Chief Court; and as a matter of fact, it does not form part of the prescribed contents of the printed or typed paper books placed before the Judges of that court. The reason of course is perfectly obvious. The record of evidence is not intended so much, if at all, for personal reference by parties, - except perhaps in those rare instances in which parties are so poor or ill-advised as to conduct their own cases, - as for the use of the Judges in the adjudication of cases in court, as also of course of counsel who help with their arguments in such adjudication; and it is not surprising that the memorandum of evidence in English made with discrimination and intelligence and a due

realization

realization of the points involved, by a trained Judge presiding over the trial is found in practice to be very much more useful and reliable than a hard-worked and ill-paid (even if always competent and honest) subordinate official's attempts at verbatim reproduction of a witness' rambling statements in the vernacular. Such reproduction is no doubt required and assumed to be made under the personal direction and superintendence of the presiding Judge; but from the nature of the case the supervision which the Judge (who is himself all the time engrossed in testing and weighing the evidence and making his own notes of it besides superintending the trial in other respects) can afford to exercise cannot possibly be continuous or thorough, and in practice, since the Judge cannot himself dictate the vernacular record to the clerk, much irrelevant and inaccurate matter not unfrequently finds its way into it. On the other hand, Judge's notes are even now almost invariably sufficiently full and accurate for all practical purposes; and this is bound to become even more the case if his record of the evidence is recognized as the sole record instead of being regarded as merely a summary or memorandum which he is not bound to make in full. There is of course nothing to prevent the Judge from taking down a particular portion of the evidence in the vernacular wherever anything turns upon the exact nature or interpretation of the expression used; and a standing instruction may be issued to Judges to do so when reasonably required by the parties to so take down a particular expression. General instructions may also be issued from time to time in the light of experience calculated to ensure that the Munsiff's record of the evidence is all

full

full and accurate as reasonably required.

The single record system is, as a matter of fact, the one which obtains in the Madras Presidency where even acting District Munsiffs are empowered under section 138 C.P.C. as a matter of course. In the Mysore State even Special Second class Magistrates have been more or less uniformly invested with power to take down evidence under section 357 of the Code of Criminal Procedure. There can be no real justification for taking a different course in respect of our Munsiffs, who are usually men of intellectual and educational qualifications above the average, and in no way inferior in capacity to the generality of District Munsiffs in British India or of Special Second class Magistrates in the Mysore State, and who besides are possessed in almost all cases of sufficient linguistic attainments to be safely trusted to take down fully and correctly in English the evidence of witnesses given before them in the vernacular.

There is also the possibility of effecting of not an inconsiderable saving in the quantity of paper consumed, and, what is even more important, it would afford an appreciable measure of very necessary relief to Court Munshis and enable them to do their other work with undivided attention. The congestion of work in most Munsiffs' courts is found at present to be very heavy, and some of it (such as the drawing up of decrees) is not done as well or expeditiously as it ought to be and could be if the court Munshis were less engrossed in the task of taking down depositions.

Finally, instead of parties applying for and obtaining in many cases the depositions in the vernacular and also the memorandum of the same in English (which is invariably complete and full), there would be a saving in cost to parties if the single record system were introduced.

Most

Most members of the present day bar possess high University qualifications and the old class of pleaders knowing only Kannada is fast disappearing.

In view of all these circumstances, it is considered that the single record system should be reverted to, and that at any rate specially selected Munsiffs, especially those at District Headquarters such as Bangalore and Mysore should be invested with the power in question in the first instance.

Sd/- A. Sreenivasaraghavachari,

Registrar.

---

"Copy"

Registrar

G. R. S. VI—G/32]

SUBJECT.....

.....

.....

*Diary No. of letter replied to* 4733

General and Revenue Secretariat

( )

, *the* *191* .

Date of issue 13.9.23

Signed by Mr. B.A.G.

Section C5

File No. 99-22

Serial No 4

No. P1666

To The Registrar, Kohlapur Court

Sir,

With reference to the Correspondence with your letter no. Roc 473 dt 15.3.1923 re the question of incorporating shorthand writers with power to take down the evidence in English language in appealable cases I am directed to state that the R.A has consulted and the trend of the discussion is towards recording the evidence in Kannarese by the judge himself. Under these circumstances [illegible] are of opinion